

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2719 OF 1993

1. Madhav Shridhar Vaikul
of Bombay, Indian inhabitant,
residing at B/21, Bhaneshwardeep
21st Road, Chembur,
Bombay--400 071.
2. Dinar Shridhar Vaikul
of Bombay Indian inhabitant
residing at B/21, Bhaneshwar
Deep, 21st Road, Chembur,
Bombay--400 071.
3. Shridhar Bhagshet Vaikul
of Bombay Indian inhabitant
residing at 37, Irani Building,
Elphinstone Road,
Bombay--400 013. : Petitioners
V/s.

1. State of Maharashtra
Notice to be served on the
Government Pleader,
High Court, Original Side,
Bombay, having his office at
Old P.W.D. Building, Fort,

Bombay--400 032.

2. Employees' State Insurance Corporation, an Authority Constituted under the Employees' State Insurance Act, 1948 having its office at ESIC Bhavan, Lower Parel, Bombay--400 013.
3. Administrative Medical Officer, Employees State Insurance Scheme (Govt. of Maharashtra), having his office at 1329, Gamco House, Senapati Bapat Road, Dadar (West), Bombay--400 028.
4. Collector of Bombay, having his office at Old Custom House, Fort, Bombay--400 023.
5. Recovery Officer, In the office of the Collector of Bombay having his office at Old Customs House, Fort, Bombay--400 023.

: Respondents

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Mr.A.A.Joshi i/b.Arun Mehta for the petitioners.

Mr.J.G.Saluja, Asstt. Govt. Pleader for respondent nos.1, 3, 4 & 5.

CORAM : S.A. BOBDE, J.

DATE : SEPTEMBER 22, 2008.

ORAL JUDGEMENT:

1. The petitioners have challenged the demand notice dated 1.11.1993 under section 267 of the Maharashtra Land Revenue Code, 1966 issued by the Recovery Officer, office of the District Collector, Mumbai. The Recovery Officer has demanded from M/s.Vaikul Medical Stores, of which the petitioners are partners, an amount of Rs.3,66,231/- payable as per certificate issued by the Administrative Medical Officer, E.S.I. Scheme, Dadar, Mumbai, together with notice charges of Rs.2/-. The Recovery Officer has further threatened the petitioners with attachment and sale of movable or immovable property if the amount is not paid within 20 days in accordance with the provisions of the Maharashtra Land Revenue Code.

2. The provisions of the Land Revenue Code which empower the Collector to recover land revenue are being used by the respondents for demanding an amount certified as due by the Administrative Medical Officer of the E.S.I. Scheme, Dadar, not for any dues found to be payable by the petitioners to the Employees State Insurance Corporation or any other authority, but for recovering amounts said to

have been paid in excess by the Employees State Insurance Corporation Officer and the Government while paying the amount of bills for medicines submitted by the petitioners' firm for supplying medicines to the beneficiaries of the scheme under the Employees' State Insurance Act, 1948.

3. The petitioners' firm are chemists. Under an arrangement with the Employees' State Insurance Corporation authorities, they supply medicines to the beneficiaries of the E.S.I. Scheme when a patient brings a prescription from a Doctor who is on the panel of the E.S.I.S. Then he obtains reimbursement from the E.S.I.C. on the basis of cash memo and the prescription. The Administrative Medical Officer of the E.S.I. Scheme is found to have addressed a letter dated 30.8.1991 demanding a sum of Rs.1,58,079/- on the alleged ground that there is an excess payment made to the petitioners' firm during the years 1979-81. The petitioners demanded inspection, but apparently the inspection did not take place. According to the respondents, the petitioner declined to take that offer. That controversy, however, is not relevant. However, one fine morning, the respondent no.3 seems to have thought of the bright idea of certifying that a sum of Rs.3,66,233/- is due to the E.S.I.C. and forwarded certificate to the Recovery Officer of the Collectorate

for taking action under the Land Revenue Code. Equally surprising, the Recovery Officer seems to have mindlessly acceded to the request and issued a notice for recovery under section 267 which is meant only for recovering land revenue not paid within the time when it becomes payable.

4. Section 267 of the Land Revenue Code reads as follows:-

"267.(1) If any land revenue is not paid, at or within, the time when it becomes payable the Collector may, on or after the day following that on which the arrears accrue due, cause a notice of demand to be served on the superior holder or on the person in possession, or on both.

(2) Every person to whom any such notice is issued shall be chargeable in respect thereof with a fee not exceeding two rupees calculated according to the rates specified in this behalf in the table in Schedule F:

Provided that, in no case shall the fee chargeable for any notice exceed the amount of the land revenue in respect of which the

said notice is issued.

(3) If the superior holder or person in possession as the case may be, shall, for the space of twenty days after service of written notice of demand of payment, fail to discharge the revenue due, it shall be lawful for the Collector to levy the same by--

(a) attachment and sale of the defaulter's movable property; or

(b) attachment and sale of such portion of the land on which the revenue is due as may be required to satisfy the demand; or

(c) attachment and sale of the right, title and interest of the defaulter in any other immovable property.

Such sales shall be by public auction and shall not take place until at least fifteen days after notice thereof shall have been published in the Official Gazette."

It is obvious from the above that this case reveals a gross abuse of powers by the respondent nos.3 & 4. The exercise of power is clearly vitiated by mala fides in law. The action blurs distinction between a demand made without authority of law and an attempt at extortion. Even if such an amount was found to have been due, neither of the respondents was justified, in any way, by making the demand under a provision for recovery of land revenue.

5. The Writ Petition is, therefore, allowed. The impugned notice is set aside. Rule is made absolute in terms of prayer clauses (a) and (b) with costs.

S.A. BOBDE, J.